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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/816,012	03/22/2001	Stefan Besling	US018029	5187

7590 10/17/2003

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EXAMINER

HESS, DANIEL A

ART UNIT	PAPER NUMBER
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2876

DATE MAILED: 10/17/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

RF

Office Action Summary

Application No.

09/816,012

Applicant(s)

BESLING ET AL.

Examiner

Daniel A Hess

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
 Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 31-50 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 31-50 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
 If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
 * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
 a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Remarks

1. Receipt is acknowledged of an RCE and accompanying amendment on 7/22/2003, which has been placed in the file of record, and to which this action is a reply.

The applicant's attention is drawn particularly to the *Response to Arguments* section, below.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
 2. Ascertaining the differences between the prior art and the claims at issue.
 3. Resolving the level of ordinary skill in the pertinent art.
 4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any

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evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 31-50 are rejected under 35 U.S.C. 103(a) as being unpatentable over O'Donnell, "How Frequent Flier Programs Work," HowStuffWorks, Inc (of record) in view of Stutz, "Your Vacation Plans for Sale?" Wired News, posted online July 9, 1998.

Re claims 31: See O'Donnell teaches (Background, paragraph 1; page 2, Frequent Flier Basics, paragraph 4; elsewhere throughout document). Frequent flier programs typically permit a user to gain access to a transportation system with a frequent flier card. It is the case that the frequent flier program is sometimes used to permit access, particularly when a person is using their miles. Alternatively, in the case that frequent flier number or even a driver's license is presented instead, this information merely acts as a proxy for the frequent flier card, and this information can be considered the pass. The program collects data pertaining the a plurality of users as they use their passes through the system. Statistics can mean generally 'numerical data' (The American Heritage® Dictionary of the English Language, Fourth Edition), which is certainly obtained.

O'Donnell fails to teach or suggest selling the data.

Stutz discussed a plan (page 1, 2nd paragraph) in which passenger data is collected for sale to direct marketers. As described, this same data that comprises frequent flier data (travel itineraries, passenger information). Although not explicitly stated, sale of this data would

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naturally subsidize the transportation system, revenue comes from a source other than ticket sales.

In view of Stutz, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include the old and well-known sales of travel data gathered because this can increase revenue for airlines, and benefit direct marketers who would sell to travelers.

Re claims 32-34, 36-38, 40: By definition, frequent flier programs meet these limitations.

Re claim 35: It has been known for years to mine data to achieve useful demographic profiling for marketing purposes. This has been done with the various data collected each decade by the US Census. The motive has been greater marketing success.

Re claim 39, 41: It is clear in Stutz (page 1, 2nd paragraph) that the direct marketers buying the data would do business in areas traveled by the fliers; otherwise what purpose would data on 'travel itineraries' serve?

Re claim 42: See claim 31. Also, regarding the limitation of 'managing the transportation system based on these statistical reports,' frequent flier programs can and are commonly used to fill airplanes. How is this done? Frequent fliers are given benefits on certain flights but not others.

Re claim 43-49: By definition, frequent flier programs meet these limitations.

Re claim 50: It is known frequent fliers programs have certain days they are not allowed to use their miles. This is a determination of the impact that the travelers would have of traffic flow, and then using the program to modify traveler's behavior, i.e. modify transportation services based on traffic flow.

Response to Arguments

5. Applicant's arguments filed 7/22/2003 regarding the applicability of frequent flier programs have been fully considered but they are not persuasive. Each of the applicant's arguments made on page 6 of the applicant's response are discussed below.

6. Regarding the limitation of 'managing the transportation system based on these statistical reports,' frequent flier programs can and are commonly used to fill airplanes. How is this done? Frequent fliers are given benefits on certain flights but not others.

7. Regarding the argument that 'frequent flier cards are not used to fill airplanes,' in the case that frequent flier number or even a driver's license is presented instead, this information merely acts as a proxy for the frequent flier card.

Conclusion

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel A Hess whose telephone number is (703) 305-3841. The examiner can normally be reached on 8:00 AM - 5:00 PM M-F.

9. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G Lee can be reached on (703) 305-3503. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

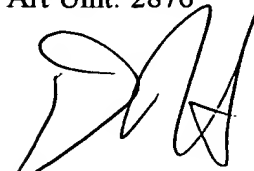
10. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0956.

Daniel A Hess

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DH

Examiner
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KARL D. FRECH
PRIMARY EXAMINER